

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BENNIE HUBBARD, #141527

Plaintiff,

v.

Case No. 10-14390
Hon. Lawrence P. Zatkoff

PRISON HEALTH SERVICES, *et al.*,

Defendants.

**ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff, a prisoner proceeding *pro se*, filed a Complaint under 42 U.S.C. § 1983, challenging the conditions of his confinement and alleging various claims of deliberate indifference to his serious medical needs. This matter is currently before the Court on Magistrate Judge Mark Randon's Report and Recommendation [dkt 49], wherein the Magistrate Judge recommends that Defendant Michigan Department of Corrections' ("MDOC") motion to dismiss be granted and Defendant Susan Wilson's ("Wilson") motion to dismiss and/or for summary judgment be denied. Petitioner timely filed an objection to the Report and Recommendation's conclusion regarding MDOC's motion to dismiss.

After a thorough review of the court file (including the parties' motions and briefs), the Report and Recommendation, and Plaintiff's objection to the Report and Recommendation, this Court will adopt the Report and Recommendation and enter it as the findings and conclusions of this Court. The Court will briefly address Plaintiff's objection.

Plaintiff objects to the Magistrate Judge's determination that, because Plaintiff failed to respond to MDOC's motion to dismiss, the motion was unopposed. Plaintiff, however, points to no legal error committed by the Magistrate Judge, objecting only to "the [Magistrate Judge's] assertion that [Plaintiff] did not file a response to the . . . [motion.]" Plaintiff contends that he did in fact send

a response to the motion, but that his response was never received due to misconduct by Defendants. Plaintiff included with his objection a copy of the response that he claims he mailed to the Court clerk.

Notwithstanding Plaintiff's failure to timely file a response, the Court finds that the legal arguments presented in MDOC's motion to dismiss are adequate grounds to grant the motion. As noted in the Report and Recommendation, the MDOC is not a "person" who may be sued under § 1983, and is immune from suits in the federal courts pursuant to the Eleventh Amendment. Plaintiff has failed to challenge the Magistrate Judge's legal conclusion.

Accordingly, for the reasons stated above, the Court hereby ADOPTS the Report and Recommendation [dkt 49] and enters it as the findings and conclusions of this Court.

IT IS FURTHER ORDERED that Defendant MDOC's motion to dismiss is GRANTED.

IT IS FURTHER ORDERED that Defendant Wilson's motion to dismiss and/or for summary judgment is DENIED.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: September 20, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on September 20, 2011.

s/Marie E. Verlinde
Case Manager
(810) 984-3290